

SENATE, No. 1426

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Requires telemarketers making sales calls to display their name and telephone number on any caller identification service; prohibits certain caller identification service manipulation and provides additional penalty.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain telemarketing sales calls and caller
2 identification service and amending P.L.2003, c.76.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.2003, c.76 (C.56:8-119) is amended to read
8 as follows:

9 1. a. The Legislature finds and declares that telemarketing
10 calls:

11 (1) Have interrupted the public's privacy, family life, and home
12 sanctity with unsolicited phone calls to sell products and services;

13 (2) Cannot be selectively ignored by recipients, since the calls
14 are commonly made by means which do not enable the recipient to
15 use a caller **[I.D.]** identification service to identify, in advance, a
16 telemarketing call or an emergency, given that the telemarketer may
17 intentionally use a method that manipulates what is displayed on a
18 caller identification service, including using a technology or method
19 that displays a telephone number or name not associated with the
20 telemarketer or is intentionally designed to misrepresent the
21 telemarketer's identity;

22 (3) May arrive at inconvenient times when a resident or family
23 member is retired for the night;

24 (4) May arrive when a resident or family member is having a
25 meal and the interruption disrupts valuable time when family
26 members are together, where family members are more remote from
27 a telephone and when food may, during the interruption, cool, melt,
28 thicken, dry, or undergo a change in palatability;

29 (5) May arrive at inconvenient times when a resident or family
30 member is engaged in entertainment, a compelling activity, or
31 relaxation;

32 (6) Use a strategy called "predictive calling" which results in
33 tens of thousands of call recipients rushing to answer phone calls, to
34 find no one is on the line. This results in great aggravation and
35 inconvenience to the public, merely to spare telemarketers (who
36 won't identify themselves as the source of the aggravation) the
37 inconvenience of finding no one home;

38 (7) Have been made to wireless phone lines resulting in cost to
39 the recipient, and in some cases, endangering the recipient's safety
40 when they may have been driving;

41 (8) Have been increasing in number, causing increased
42 inconvenience, widespread public outrage and urgent appeals to
43 protect the public from such calls;

44 (9) Are not the only means for marketers to promote their
45 product or services to prospective customers, although marketers

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 often claim it to be more economical and more productive than
2 other means to provide the benefits of increased competition.
3 Marketers have available printed mail, **【email】** electronic mail,
4 **【face to face】** face-to-face personal solicitation, and various forms
5 of advertising;

6 (10) Are in some cases beyond the regulatory jurisdiction of this
7 Legislature and any New Jersey statute, because they are forms of
8 speech protected by State and federal constitutional case law.

9 b. The Legislature further declares it to be the policy of this
10 State to provide the broadest possible protection to protect public
11 privacy and the sanctity of homes and to protect families and
12 individuals from unsolicited interruptions. In furtherance of this
13 policy, the establishment of a disorderly persons offense for the
14 intentional use of a method that manipulates a caller identification
15 service, including using a technology or method that displays a
16 telephone number or name not associated with the telemarketer or is
17 intentionally designed to misrepresent the telemarketer's identity, is
18 necessary to reduce the number of circumstances where that
19 intentional method is used to deceive the residents of this State.

20 c. It is not the intent of the State to restrict telemarketing
21 activity where such activity is protected by State and federal case
22 law, where such restriction is prohibited by State and federal
23 constitutional case law or to restrict purely charitable activities.

24 (cf: P.L.2003, c.76, s.1)

25

26 2. Section 2 of P.L.2003, c.76 (C.56:8-120) is amended to read
27 as follows:

28 2. As used in **【this act】** P.L.2003, c.76 (C.56:8-119 et seq.):

29 "Caller identification information" means information provided
30 by a caller identification service regarding the telephone number,
31 location, organization, or other information regarding the
32 origination of a call or text message made using a voice
33 telecommunications service.

34 "Caller identification service" means any service or device
35 designed to provide the user of the service or device with the
36 telephone number of, or other information regarding the origination
37 of, a call or text message made using a voice telecommunications
38 service, and includes automatic number identification services.

39 "Customer" means an individual who is a resident of this State
40 and a prospective recipient of a telemarketing sales call.

41 "Director" means the Director of the Division of Consumer
42 Affairs in the Department of Law and Public Safety.

43 "Division" means the Division of Consumer Affairs in the
44 Department of Law and Public Safety.

45 "Local exchange telephone company" means a
46 telecommunications carrier authorized by the Board of Public
47 Utilities to provide local telecommunications services.

1 "Merchandise" means merchandise as defined in subsection (c)
2 of section 1 of P.L.1960, c.39 (C.56:8-1), including an extension of
3 credit.

4 "No telemarketing call list" or "no call list" means a list of
5 telephone numbers of customers in this State who desire not to
6 receive unsolicited telemarketing sales calls.

7 "Telemarketer" means any entity, whether an individual
8 proprietor, corporation, partnership, limited liability corporation or
9 any other form of business organization, whether on behalf of itself
10 or others, who makes residential telemarketing sales calls to a
11 customer when the customer is in this State or any person who
12 directly controls or supervises the conduct of a telemarketer.

13 "Telemarketing" means any plan, program or campaign which is
14 conducted by telephone to encourage the purchase or rental of, or
15 investment in, merchandise, but does not include the solicitation of
16 sales through media other than a telephone call.

17 "Telemarketing sales call" means a telephone call made by a
18 telemarketer to a customer as part of a plan, program or campaign
19 to encourage the purchase or rental of, or investment in,
20 merchandise, except for continuing services. A telephone call made
21 to an existing customer for the sole purpose of collecting on
22 accounts or following up on contractual obligations shall not be
23 deemed a telemarketing sales call.

24 "Unsolicited telemarketing sales call" means any telemarketing
25 sales call other than a call made:

26 (1) in response to an express written request of the customer
27 called; or

28 (2) to an existing customer, which shall include the ability to
29 collect on accounts and follow up on contractual obligations, unless
30 the customer has stated to the telemarketer that the customer no
31 longer desires to receive the telemarketing sales calls of the
32 telemarketer.

33 "Voice telecommunications service" means the offering of voice
34 communications service, including Voice over Internet Protocol
35 service as defined pursuant to section 3 of P.L.2007, c.195
36 (C.48:17-34) or commercial mobile service , using a public
37 switched telephone network or a successor network, directly to the
38 public or to those classes of users as to be effectively available
39 directly to the public.

40 (cf: P.L.2003, c.208, s.1)

41
42 3. Section 10 of P.L.2003, c.76 (C.56:8-128) is amended to
43 read as follows:

44 10. a. **【No】** A telemarketer shall not make or cause to be made
45 any unsolicited telemarketing sales call to any customer whose
46 telephone number is included on the no telemarketing call list
47 established pursuant to section 9 of **【this act】** P.L.2003, c.76
48 (C.56:8-127), except for a call made within three months of the date
49 the customer's telephone number was first included on the no call

1 list, but only if the telemarketer had at the time of the call not yet
2 obtained a no call list which included the customer's telephone
3 number and the no call list used by the telemarketer was issued less
4 than three months prior to the time the call was made.

5 b. A telemarketer making a telemarketing sales call shall,
6 within the first 30 seconds of the call, accurately identify the
7 telemarketer's name, the person on whose behalf the call is being
8 made, and the purpose of the call.

9 c. A telemarketer shall not make or cause to be made any
10 unsolicited telemarketing sales call to any customer between the
11 hours of **[9]** 9:00 p.m. and **[8]** 8:00 a.m., local time, at the
12 customer's location.

13 d. **[A telemarketer shall not intentionally use any method that**
14 **blocks a caller identification service from displaying caller**
15 **identification information or otherwise circumvents a customer's**
16 **use of a telephone caller identification service, including, but not**
17 **limited to, the use of any technology or method which displays a**
18 **telephone number or name not associated with the telemarketer or**
19 **intentionally designed to misrepresent the telemarketer's identity.]**
20 When making or causing to be made any telemarketing sales call, a
21 telemarketer shall transmit or cause to be transmitted the
22 telemarketer's actual telephone number and, when made available
23 by the telemarketer's telephone company, the name of the
24 telemarketer, to any caller identification service in use by a
25 recipient of a telemarketing sales call; provided, however, that it
26 shall not be a violation of this subsection to substitute, for the name
27 and telephone number used in or billed for making the call, the
28 name of the seller on behalf of which a telemarketing sales call is
29 placed and the seller's customer service telephone number that is
30 answered during regular business hours.

31 e. (1) A telemarketer, in connection with any voice
32 telecommunications service used within this State, shall not
33 knowingly make, place, initiate, or otherwise transmit a call or text
34 message, placed to a person within this State, or engage in conduct
35 that results in the display of misleading, false, or inaccurate caller
36 identification information on the receiving party's telephone or
37 circumvent a caller identification service that is designed to allow
38 the receiving party to identify caller identification information
39 regarding the origin and nature of the call or text message with the
40 intent to defraud, cause harm, or wrongfully obtain anything of
41 value.

42 (2) Consistent with the provisions of the federal "Truth in Caller
43 ID Act of 2009" (47 U.S.C. s.227(e)), or any other federal law, rule,
44 regulation, or order as applicable, nothing in this subsection shall be
45 construed to:

46 (a) prevent or restrict a person from blocking the capability of
47 any caller identification service to transmit caller identification
48 information;

1 (b) prohibit the use of caller identification manipulation as
2 authorized pursuant to a court order or as determined by the Federal
3 Communications Commission;

4 (c) authorize or prohibit the use of caller identification
5 manipulation during the course of any investigative, protective, or
6 intelligence activities performed in connection with official duties
7 and in accordance with all applicable laws, by any law enforcement
8 agency or intelligence agency of the United States, a state, or a
9 political subdivision of a state; or

10 (d) authorize any conduct prohibited pursuant to section 13 of
11 P.L.2005, c.283 (C.45:17A-30.1) or any other law, rule, regulation,
12 or order.

13 (3) The provisions of this subsection shall not apply to:

14 (a) a provider of voice telecommunications service acting solely
15 as an intermediary for the transmission of voice telecommunications
16 service between the caller and the recipient of the call; or

17 (b) a caller who, based on the telephone number called,
18 reasonable believes the recipient of the call is not physically located
19 within the State.

20 (cf: P.L.2005, c.289, s.1)

21
22 4. Section 14 of P.L.2003, c.76 (C.56:8-132) is amended to
23 read as follows:

24 14. a. A violation of any provision of **【this act】** P.L.2003, c.76
25 (C.56:8-119 et seq.) shall be an unlawful practice subject to the
26 penalties applicable pursuant to section 1 of P.L.1966, c.39 (C.56:8-
27 13) and section 2 of P.L.1999, c.129 (C.56:8-14.3), except that a
28 person may not be held liable for violating **【this act】** P.L.2003, c.76
29 (C.56:8-119 et seq.) if:

30 **【a.】** (1) the person has obtained a copy of, and updated
31 quarterly, the no call list and has established and implemented
32 written policies and procedures related to the requirements of 【this
33 act】 P.L.2003, c.76 (C.56:8-119 et seq.);

34 **【b.】** (2) the person has trained telemarketers in the person's
35 employ in the requirements of 【this act】 P.L.2003, c.76 (C.56:8-
36 119 et seq.);

37 **【c.】** (3) the person maintains records demonstrating compliance
38 with subsections a. and b. of this section and the requirements of
39 **【this act】** P.L.2003, c.76 (C.56:8-119 et seq.); and

40 **【d.】** (4) any unsolicited telemarketing sales call is an isolated
41 call made no more than one time in a 12-month period.

42 b. In addition to those penalties for which a person may be
43 liable as provided in subsection a. of this section, any person who
44 knowingly violates the provisions of paragraph (1) of subsection e.
45 of section 10 of P.L.2003, c.76 (C.56:8-128) shall be guilty of a
46 disorderly persons offense.

47 (cf: P.L.2003, c.76, s.14)

1 5. This act shall take effect on the first day of the fourth month
2 next following the date of enactment, but the Director of the
3 Division of Consumer Affairs in the Department of Law and Public
4 Safety may take anticipatory administrative action in advance
5 thereof as shall be necessary for the implementation of this act.

6
7
8 STATEMENT
9

10 This bill prohibits a telemarketer, when making or causing to be
11 made any telemarketing sales call, from failing to transmit or cause
12 to be transmitted the telephone number, and, when made available
13 by the telemarketer's telephone company, the name of the
14 telemarketer, to any caller identification (ID) service in use by a
15 recipient of a telemarketing sales call. The bill permits the
16 telemarketer to substitute, for the name and telephone number used
17 in or billed for making the call, the name of the seller on behalf of
18 which the call is placed and the seller's customer service telephone
19 number that is answered during regular business hours.

20 This bill prohibits a telemarketer, in connection with any
21 telecommunications service used within this State, to knowingly
22 make, place, initiate, or otherwise transmit a call or text message or
23 engage in conduct that results in the display of misleading, false, or
24 inaccurate caller ID information on the receiving party's telephone
25 or circumvent a caller ID service that is designed to allow the
26 receiving party to identify caller ID information regarding the
27 origin and nature of the call or text message with the intent to
28 defraud, cause harm, or wrongfully obtain anything of value.

29 The bill provides, consistent with federal law or otherwise,
30 several exceptions to the bill's prohibition on caller ID
31 manipulation.

32 Further, the bill provides that a person who knowingly
33 manipulates a caller ID service is guilty of a disorderly persons
34 offense. A disorderly persons offense is ordinarily punishable by a
35 term of imprisonment of up to six months or a fine of up to \$1,000,
36 or both.